IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1590 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
MUKESHKUMAR K PATEL & 1 - Defendant(s)

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Appearance :
MS MAYA DESAI for Appellant(s) : 1,
MR ND BUCH for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/08/2007

ORAL JUDGMENT

1. Ms. Maya Desai, learned counsel for the appellant; Shri N.D. Buch, learned counsel for

the respondent no.1; none for the respondent no.2 though served.

2. The appellant being aggrieved by the award dated 1.12.89 passed by the Motor Accident Claims Tribunal [Aux.], Sabarkantha at Himmatnagar, in M.A.C.P. No. 259 of 1987 is before this Court with a submission that the Tribunal was unjustified in holding the driver of the bus negligent to the extent of 100%. The Tribunal has awarded a sum of Rs. 90,000/- and the total liability of the appellant is under challenge in this appeal.

3. The short facts necessary for disposal of the present appeal are that the respondent no.1 filed Claim Petition submitting inter alia that on the fateful day, the claimant was going on his Luna with his wife who was pillion rider along with minor child. When they were near railway crossing, driver of the S.T. Bus No. GRU 7949 driving the vehicle rashly and negligently, despite a curve, without slowing down the speed took a sharp turn, as a result of which, there was an accident between the bus and Luna, driver

of the Luna was thrown on the right side but the pillion rider, unfortunately was crushed under the rear wheel of the bus.

4. The appellant and the driver, after notice appeared before the Claims Tribunal and submitted that in fact, the driver was driving the vehicle at a moderate speed and after finding that he was to take a turn on a curved road, he had reduced the speed but the deceased after finding that the bus was oncoming, got frightened and tried to cross the road and in that process, she was crushed. It was submitted that the driver was not at all negligent. It is to be noted that the driver of the Luna and the driver of the bus were prosecuted but each of them was acquitted by the concerned Criminal Court.

5. After recording the evidence and hearing the parties, the learned Tribunal held that the driver was 100% negligent and there was no negligence on the part of the driver of the Luna.

6. Ms. Desai, learned counsel for the appellant,

after taking me through the evidence available on the records and the findings recorded by the Tribunal, submitted that the principle of res ipsa loquitur would apply to the facts of the case and the facts would clearly show that the driver of the Luna was negligent in driving the said vehicle. Shri Buch, learned counsel for the other side, however, submitted that the facts would clearly prove that the bus was coming from the opposite side, the driver did not slow his speed and after taking a sharp turn, hit the Luna which resulted into untimely death of a young woman of 20-22 years.

7. From the evidence available on the records, it would clearly appear that the driver of the bus was not driving the bus at a moderate speed; he was comparatively fast and despite knowing that the road was curved, he took a sharp turn. If these are the facts flowing on the surface of the records, then, this Court finds no difficulty in holding that the driver of the bus was 100% negligent. No other question was argued.

8. I find no reason to interfere. The appeal deserves to and is accordingly dismissed, however, there shall be no order as to costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-